

Background

A community-based children's service is governed by a voluntary management committee or board. Services that are managed by the community are more able to work in line with Quality Area 7 under the National Quality Framework:

- make decisions which reflect their community and its culture
- be well connected to their community
- be responsive to their community
- adjust service delivery quickly
- develop social capital by building connections, relationships and networks for families
- contribute to the development of capable, healthy communities.

Members of the committee/board are elected by members of the organisation at the Annual General Meeting (AGM). The committee/board's role is to govern the organisation for the following twelve months.

The committee/board is ultimately responsible for meeting the organisation's legal obligations and ensuring its on-going viability. The committee/board is also the employer of all the staff who work for the organisation.

The committee/board is accountable to members of the organisation, clients and the broader community, including regulatory agencies such as the Australian Children's Education & Care Quality Authority (ACECQA), NSW Department of Education, NSW Family & Community Services, and the NSW Office of Fair Trading (if the organisation is a corporation) or the Australian Securities and Investments Commission (if the organisation is a company).

To ensure that the organisation meets its objectives, the committee/board employs a director to manage the day-to-day operations of the service.

The effectiveness of the organisation depends on a well-defined partnership between the committee/board and the director. The partnership requires:

- clear understanding of the roles and responsibilities of each party
- regular and open communication between both sides.

Legal structure

Creating a legal entity that limits the personal liability of the committee/board and its members is a crucial part of the functioning of the organisation. In the non-profit children's services sector this can be achieved in three different ways:

- as an association under the Associations Incorporation Act 2009
- as a company limited by guarantee under the Corporations law
- as a co-operative under the Co-operatives Act 1992.

It is usually a condition of funding that the organisation be incorporated.

Incorporation

Most community managed children's services will be incorporated as associations. The Associations Incorporation Act 2009 is administered by the NSW Office of Fair Trading. The Act sets up a framework within which the incorporation is required to operate.

Constitution

The Act requires an incorporation to have a constitution. The constitution (or rules of incorporation) provides an operational structure that must be adhered to so that it can retain the limited liability afforded through incorporation. Any proposed changes to the constitution must be lodged with and approved by the Office of Fair trading.

Limited liability

As a legal entity in its own right, an association bears liability for its acts. This means that claims made against an association, either as debts or compensation for negligence, are the responsibility of the association. However, incorporation does not provide protection for committee members who act outside the framework and capabilities of the association.

For example, committee members could be personally liable for the debt, a fine or possible imprisonment if a decision is made to incur a debt and there are reasonable grounds to expect that the debt cannot be met.

Public Officer

The public officer (under the Associations Incorporation Act) is a contact person for the Office of Fair Trading, and is responsible for keeping them informed of changes in the Association and its financial situation. This person can be a committee member, a member of the association who is not on the committee, a staff member or an interested member of the community. The public officer must be at least 18 years of age and a resident of NSW.

Note: this may be a different person to the public officer you have registered with the Australian Tax Office to meet their requirements.

Overview of Legal Obligations

Background

Management of children's services may be undertaken by incorporated community based associations, local government or other sponsoring body, corporate entities or individual proprietors. Management must be aware of and comply with a range of local, state and commonwealth government laws and regulations. The manner in which services will ensure that they meet their legal responsibilities will vary for each individual service depending on the legal structure.

Following is a summary of the legislation that children's services must comply with.

Local Government

Administration of regulations relating to:

- building standards and fire safety
- food safety regulations

State Government

Obligations relating to the service's legal structure and operation such as

- [Associations Incorporation Act 2009](#)
- [Associations Incorporation Regulation 2016](#)
- [Co-operatives National Law \(NSW\)](#)
- [Co-operatives National Regulation \(NSW\)\(CNR\)](#)

If in receipt of state funding

- NSW Department of Education service agreement

Licensing and child protection requirements

- [NSW Children and Young Persons \(Care & Protection\) Act 1998](#) and accompanying [Regulations](#)

- for “out of scope” services the [Children \(Education and Care Services \) Supplementary Provisions Act 2011](#), and the [Children \(Education and Care Services\) Supplementary Provisions Regulation 2019](#).

Legislation that relates to discrimination

- [Anti Discrimination Act 1977](#)

If you undertake fundraising activities

- [Charitable Fundraising Act 1991](#)

Legislation that relates to employment

- [Fair Work Act 2009](#)
- [National Employment Standards](#)
- [Long Service Leave Act 1955](#)
- [Work Health and Safety Act 2011](#)
- [Work Health and Safety Regulation 2017](#)
- [Workers Compensation Act 1987](#)
- [Workplace Injury Management Act 1998](#)
- [Workers Compensation Regulation 2016](#)

Federal Government

Obligations relating to the service’s legal structure such as

- [The Corporations \(Aboriginal and Torres Strait Islander\) Act 2006](#)
- [Corporations Act](#)

If in receipt of Commonwealth funding

- [Child Care Act 1972](#)
- [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#)
- [A New Tax System \(Family Assistance\) Act 1999](#)
and disallowable instruments under the above legislation
- funding agreements

Anti-discrimination legislation such as

- [Disability Discrimination Act, 1992](#)

- [Sex Discrimination Act 1984](#)
- [Racial Discrimination Act 1975](#)
- [Age Discrimination Act 2004](#)
- [Australian Human Rights Commission Act 1986](#)
- [Privacy Amendment \(Private Sector\) Act 2000](#)

Licensing and child protection requirements

- [Children \(Education and Care Services\) National Law \(NSW\) 2010](#)
- [Education and Care Services National Regulations](#)

Taxation legislation such as

- [Income Tax Assessment Act 1936 and 1997](#)
- [A New Tax System \(Goods and Services Tax\) 1999](#)
- [A New Tax System \(Goods and Services Tax\) Regulations 2019](#)
- [Fringe Benefits Tax Assessment Act 1986](#)

Legislation relating to employment such as

- [Superannuation Guarantee \(Administration\) Act 1992](#)
- [Fair Work Act 2009](#)
- [Modern Awards](#)

Delegation

Background

In this article the term “provider” means the owner of a service, such as the committee/board of an association, the board of a company or an individual owner of a business, as well as the approved provider of a service.

When areas of an activity need to be developed beyond the time allocated in meetings, some tasks may be required to be delegated by the provider to others.

Often, the delegation of tasks is necessary to ensure that the work of an organisation can be completed.

While there may be some tasks assigned to an individual due to their role, there may also be some tasks that are delegated to the most suited person due to their experience, skills and/or available time.

Choosing to delegate

It is important to remember that while the provider can delegate authority to carry out tasks, the overarching responsibility cannot be delegated to others. The provider is unable to delegate out the power of delegation or any function which is a duty imposed on the provider by relevant legislation, such as the Associations Incorporations Act, the Education and Care Services National Law and Regulations or by any other law.

The provider is ultimately accountable for everything that goes on within the organisation.

Effective delegation

It is important that delegation is carried out effectively.

Effective delegation is carried out:

- with proper oversight and timeframes for review
- within the scope of the relevant law, and
- with a systematic approach.

Examples of tasks that may be delegated:

- policy development
- project management and delivery
- financial management and/or reporting
- representation at meetings with staff or externally on behalf of the organisation.

Depending on the nature and size of the role, tasks can be delegated to:

- the service provider
- a sub-committee or provider advisory group
- paid staff.

Delegation policies and procedures – between the operator and the director

Delegation policies and procedures are crucial in giving clarity to both the provider and the service director. When clear and comprehensive delegation processes are documented and followed everyone involved will understand their role, their boundaries, and their responsibilities.

If your service does not have a delegation policy, procedure and/or table, it should be developed with both parties working together. It is a good idea to review the delegations each year to ensure that everything is up to date, and suitable for current circumstances. If you are a community-based service run by a committee, ideally the first committee meeting after the AGM is an appropriate time to do this as any new committee member can be inducted into their responsibilities and duties and understand the director's responsibilities and duties. Similarly, if you employ a new director, current delegations should be one of the first things looked at during their orientation and induction process.

The following pointers are useful reminders, regardless of who you are delegating to:

1. Use a template.
Templates will assist the delegation to be documented providing clarity for all involved. **[Download CCSA's Delegation template here.](#)**
2. Ensure transparency between all stakeholders.
Documentation that is easy to use and easy to access will assist with this.

3. Stay in line with your constitution, governing rules and/or business policies. These documents may specify conditions for appointing delegates and any processes that surround this.
4. Ensure that regular updates and reviews are conducted. Be specific and set limits for decision making authority, financial spending and project development.
5. Receive reports on the development of the delegated tasks. Take time to read the written reports and ask questions, this will assist the operator to ensure that the delegation is working effectively and is within the specified parameters.
6. Retain control of all delegation. This is not an out of sight out of mind scenario. It is the duty of each person in management and control to carry out their functions with due care and diligence.

Public officer roles and responsibilities

The term “public officer” is used in relation to Incorporated Associations and the Australian Tax Office. You may have the same or different people fulfill each of these roles, but understanding the difference between each type of public officer will help ensure you have the right people in place.

The role of a public officer in an association in NSW

Associations under the NSW *Associations Incorporation Act 2009* must appoint a public officer to be an official point of contact for the NSW Office of Fair Trading. It is not a position on the management committee.

To be eligible they must be over the age of 18 years and a resident of NSW. A public officer can be a staff member, often the Director or Administration Officer. A member of the committee, or a member of the association can also be appointed.

Public officers are responsible for:

- notifying Fair Trading of any change in the association’s official address within 28 days
- collecting all association documents from former committee members and delivering the documents to the new committee member
- returning all association documents to a committee member within 14 days, upon vacating office
- acting as the official contact for the association, including taking delivery of documents served on the association and bringing them to the attention of the committee as soon as practicable
- custody of any documents as required by the constitution.

The role of a public officer for the Australian Tax Office (ATO)

The ATO requires entities such as incorporated associations and companies to appoint a public officer to act as the primary contact. This is the person the ATO normally deals with for the entity’s tax affairs such as record keeping and submitting returns and they can add or remove authorised contacts listed with the ATO.

The ATO’s public officer must:

- be 18 years old or older

- live in Australia
- understand the nature of the appointment
- be identified as the public officer on the Australian Tax Office (ATO) systems
- establish their identity at contact.

Roles and responsibilities of the committee/board

In children's services, the role of the committee/board is to:

- determine the service's mission and purpose
- set the strategic directions of the organisation, that is, develop the service's strategic plan
- appoint and monitor the performance of the director, the nominated supervisor, responsible person and the educational leader (they may be the same person)
- ensure there are sufficient certified supervisors to cover the opening hours of the service every day
- ensure staff are employed in accordance with industrial obligations
- ensure compliance with legal obligations
- ensure the on-going financial viability of the service
- ensure the development of a service philosophy (statement of principles)
- monitor and evaluate the service's performance against the strategic plan (including the committee/board's own performance)
- enhance the profile of the service in the community
- recruit and orient new committee/board members.
- collaborate with the director as the "expert in the field".

Individual roles of committee/board members

In addition to understanding the role of the committee/board as a whole, each member needs to be aware of their individual role on the committee/board (particularly if they are an office bearer). Following is an outline of individual roles of the office bearers and the ordinary members of the committee/board. This is a guide which should be adapted to meet the needs of your service. Some tasks may be delegated to paid staff.

President or Chairperson

The president/chairperson's role encompasses three broad areas:

- leadership of the committee/board
- liaison with director
- public relations.

To be effective in these areas, it is important that the president/chairperson has an awareness and understanding of the needs of children and families and the role of the service within the community.

The president/chairperson's responsibilities include:

- understanding the organisation's governing rules/constitution
- developing the committee/board meeting agenda, in consultation with the director and other committee/board members.

A primary responsibility of the president is chairing meetings. This includes:

- working through the agenda, prioritising items if time is limited
- ensuring discussion remains relevant
- keeping discussions to appropriate time
- allowing everyone to have an opportunity to express their views and opinions
- acting as final decision maker when voting is tied

The president/chairperson must also:

- sign the minutes after they have been confirmed
- prepare and deliver a report at the organisation's Annual General Meeting as well as any other reports as required
- communicate regularly with other members of the committee/board and director
- keep track of tasks that have been allocated to other committee/board members or sub-committees
- speak on behalf of the service and represent it within the broader community.

While the role of the president tends to be an all-encompassing one, the help and support of fellow committee/board members can be enlisted in any area. The president should delegate and co-ordinate tasks to make sure action is taken.

Vice-President or Vice-Chairperson

The vice-president/vice-chairperson supports the president/chairperson, and fills the role of president/chairperson when required (for instance, chairing the meeting or representing the service if the president/chairperson is absent)

This role tends not to be too arduous so individual services should consider how best to utilise the skills of the person in this role by assigning particular tasks.

Secretary

The secretary is responsible for the records of the service (other than financial records).

Secretarial responsibilities include:

- keeping a current list of members of the organisation, including addresses and contact numbers
- consulting with the president/chairperson on preparation of the agenda
- distributing the agenda for meetings, keeping in mind any requirements under your association rules/constitution
- keeping accurate records of meetings
- distributing copies of minutes at or before the next meeting, in accordance with governing rules/constitution
- presenting applications for new membership to the committee/board for approval in accordance with governing rules/constitution
- collecting, reporting and responding to relevant correspondence as directed
- keeping the committee/board's files in order and up-to-date.

Treasurer

The extent of the work of the treasurer needs to be assessed in conjunction with current practices within your service. Most services will have delegated some or all of the day to day financial administration of the service to the director who may in turn supervise the work of a bookkeeper/clerical/admin assistant.

Even if such delegations are in place, the role of the treasurer is to ensure:

- preparation of the annual budget (with other key people eg. Director)
- effective monitoring of income and expenditure (profit/loss) against the budget
- accurate books and financial records representing the current financial situation of the service are kept, and documents lodged as required
- correct accounting procedures including associated documentation (invoices, receipts, bank statements, etc)
- presentation of financial reports (eg profit and loss statements).

The treasurer plays a key role in reporting on the financial position of the organisation to the committee/board, including:

- tabling financial reports (e.g. profit and loss statements against the budget and the balance sheet)
- presenting annual financial statements and the auditor's report at the AGM.

The treasurer plays a key role in reporting on the financial position of the organisation to the board/committee. However, the whole board/committee is responsible for ensuring the financial viability of the service.

Ordinary committee/board members

In addition to the roles of the office bearers, the committee/board will also have a number of other members who may or may not have delegated responsibilities.

General committee members:

- support office bearers by participating actively and constructively in meetings
- participate in discussions and decisions of the management committee
- volunteer to support organisational activities as time allows
- represent the organisation at community events.

What makes an effective committee/board member?

It is important to remember that the key to being an effective committee/board member is the attitude and values that you bring to the position. Here are a few suggested principles to help you be an effective committee/board member:

- attend committee/board meetings regularly and take an active part in meetings
- be aware of and keep up to date with what the organisation is doing (for example, you should read the service's current business plan and, for services funded by Education and Communities Office of Education „, its Service Specifications and Funding Agreement.
- find out how any proposed action will affect the organisation – by asking the director or another relevant person to provide information
- work as a team with your committee/board to make joint decisions and work towards shared goals, whilst making sure you act independently and not at the bidding of other people, such as the director/co-ordinator or president/chairperson

- always put the organisation's interests above your own personal interests
- declare any interest to the president/chairperson in any matter that could affect your income or other activities and be prepared to stand aside for votes or discussion when there is a direct or indirect conflict of interest
- use any information gained through the position properly – that is, in the best interests of the organisation
- maintain the confidentiality of children, families and the committee/board at all times
- take individual responsibility for ensuring the organisation has appropriate records of its financial transactions and its financial position and that it does not incur expenditure it cannot meet
- take personally responsibility for ensuring the organisation meets its legal requirements.

An effective committee/board member must also be prepared to:

- ask reasonable questions to help make informed decisions
- show respect to fellow committee/board members and listen to their point of view
- assist the director and staff whilst maintaining objectivity
- have a sense of humour and enjoy committee/board meetings.

An effective committee/board member is someone who can work as part of the team but be independent in their views and voting. They will actively support decisions of the committee/board as a whole.

Adapted from "Governance: What makes an effective management committee?" Community Management, vol 1, no 2, May 1999. pp. 14-15.

The role of the director

To ensure that the organisation meets its objectives, the committee/board employs a director to manage day-to-day operations of the service.

While the director/co-ordinator does not have voting rights at committee/board meetings, the director forms an integral part of the management team.

In children's services, the director is employed to:

- manage the day to day operations of the service including supervising other staff
- keep the committee well-informed by providing relevant and up-to-date information to assist with their decision-making
- work in partnership with the committee/board to achieve the service's mission and purpose
- develop an annual Quality Improvement Plan with the committee/board and staff with contributions from families and the community.
- contribute to the ongoing tracking and evaluation of the Quality Improvement Plan
- report to the committee/board on progress against the service's strategic plan.

If the director is also the nominated supervisor they have specific responsibilities under the National Regulations for ensuring that the service complies with them. These include:

- ensuring that there is always at least one person on the premises who is the responsible person, and holds a current first aid and anaphylaxis certificate
- ensuring that all children attending the service are appropriately enrolled
- ensuring that interactions with children are appropriate
- ensuring acceptable health and hygiene practices are followed
- ensuring that all dangerous cleaning materials, medications etc are kept in a safe manner and are inaccessible to children
- ensuring that at the end of the day all areas of the centre are checked to make sure no children have been left behind.

The relationship between the role of the committee/board and the director

Understanding the differences between the role of the committee/board and the director can help to develop an effective partnership.

The following table gives examples of the different focus of the committee/board and the director. This is not a definitive list, but provides a useful starting point to define the differences between the governance role of the committee/board and the management role of the director.

Governance roles of the Committee

The committee/board is responsible for the overall performance of the organisation.

The committee/board sets and reviews the organisation's mission, values (policies) and strategic directions.
Ensures the development of a Quality Improvement Plan.

The committee/board plans for the long term performance/adaptive capacity of the organisation.

The committee/board monitors and reviews the achievements of the organisation against its aims and objectives.

The committee/board appoints the director.

The committee/board establishes the values and culture of the organisation.

The committee/board makes decisions on matters of strategic or symbolic significance for the organisation.

The committee/board is accountable to and reports to various stakeholders, in particular the members of the organisation they represent.

The committee/board is more concerned with macro management (in other words governance).

The committee/board ensures a safe environment is provided.

Management roles of the Director

The director is responsible for the day to day management & operations of the organisation.

The director implements the organisation's policies/ objectives by developing operational plans to meet organisation's aims and objectives.
Facilitates the development of a Quality Improvement Plan.

The director makes decisions on the short term operation of programs and services.

The director makes decisions on the short term use of human, financial and physical resources to achieve aims and objectives.

The director oversees the performance of the other staff employed in the organisation.

The director finds ways to enact the values and culture of the organisation.

The director makes decisions on matters of operational significance.

The director is accountable to and reports to the committee/board.

The director is more concerned with micro management.

The director monitors and records safety and related issues regarding staff and others on the premises.

Directors' attendance at committee meetings

One of the major ways the director and committee interact is through committee meetings.

The director usually attends a committee meeting at the invitation of the committee. The committee can, and often will, meet without the director attending, to discuss matters not requiring their input.

The director is invited to attend a committee meeting to present reports and information in relation to the day-to-day running of the service, as well as to discuss concerns or issues that have arisen since the last meeting. It is also an opportunity for the committee to inform the director of any updates that are relevant to the management of the service.

Accurate reporting is the key to a successful meeting for both the director and the committee. Reports should take a risk management approach, showing what the risks or concerns are and how they are being managed and mitigated. Examples of this might be Workplace Health and Safety, staffing matters and potential breach of the regulations.

If the committee has not invited the director to the committee meeting, it is important that they present the director with communication that details relevant operational decisions that have been made and/or updates and changes to tasks that have been delegated to the director.

If the director is on the committee (on rare occasions a constitution will allow for this) there will be periods where they cannot attend the meeting. This is due to a conflict of interest, i.e. where someone who may have a direct benefit in a decision being made cannot participate in the discussion or the voting around that decision.